Extract from Prepared Statement of Roswell B. Perkins

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Before the

Subcommittee on National Policy Machinery

Senator Henry M. Jackson, Chairman

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The report of our special committee, which will be published by Harvard University Press in about a month, has two themes. The first is that ethical standards within the Federal Government must be beyond reproach, and that there must, accordingly, be effective regulation of conflicts of interest in Federal employment. The second is that the Federal Government must be in a position to obtain the personnel and information it needs to meet the demands of the Twentieth Century.

These themes are coequal. Neither may be safely subordinated to the other. What is needed is balance in the pursuit of the two objectives. We need a long-run national policy which neither sacrifices Governmental integrity for opportunism nor drowns practical staffing needs in moralism. We need a careful regulatory scheme that effectively restrains official conflicts of interest without generating pernicious side effects on recruitment.

The basic conclusion of our Special Committee is that such a scheme can be worked out. Our report and the Executive Conflict of Interest Act which we propose contain a recommended new program for achieving this result.

I shall state the thirteen major recommendations of our Special Committee. As you will see, some of them point in the direction of broadening and closing loopholes in the present laws. Nevertheless, these recommendations for expansion and tightening will not, in our view, in any way adversely affect recruitment. Others of the recommendations point toward realistic adjustment of the laws in ways which will help facilitate

recruitment, and I will return to these recommendations for a more detailed consideration after my listing of all thirteen.

The capsulized statement of these recommendations may seem underly general and vague to you. However, I ask you to keep in mind that each is backed up by precise statutory language in S. 3080, our proposed Executive Conflict of Interest Act, and a detailed technical commentary in our Report on each provision.

Recommendation 1. "Conflict-of-interest" problems should be recognized and treated as an important, complex, and independent subject of attention and concern in the management of the governmental establishment.

Recommendation 2. The present scattered and uncoordinated statutes relating to conflicts of interest should be consolidated into a single unified Act, with a common set of definitions and a consistent approach. Archaic provisions should be repealed.

Recommendation 3. The restraints contained in the present statutes should be greatly expanded in their scope by making them applicable to essentially all matters in which the public deals with the modern Federal Government.

Recommendation 4. Certain important restraints now covered in regulations or not at all should be included in the basic statutes, particularly restraints relating to receipt of gifts and coercive use of office.

Recommendation 5. The statutes should permit the retention by Government employees of certain security-oriented economic interests, such as continued participation in private pension plans.

Recommendation 6. Wherever it is safe, proper and essential from the viewpoint of recruitment, the statutes should differentiate in treatment between regular employees and citizens who serve the Government only intermittently, for short periods, as advisers and consultants.

Recommendation 7. Regular, continuing and effective enforcement of the law and regulations should be assured by emphasizing administrative remedies, rather than the clumsy criminal penalties of present law.

Recommendation 8. The statutes should create the framework for active and effective administration of the system of conflict-of-interest restraints, headed up with clear responsibility in the President. The President should designate, pursuant to the proposed Act, an Administrator to assist him in this function.

Recommendation 9. In addition to the statutes themselves, there should be a "second tier" of restraints, consisting of Presidential regulations amplifying the statutes, and a "third tier," consisting of agency regulations tailored to the needs of particular agencies. The responsibility for day-to-day enforcement of the statutes and regulations should rest upon agency heads.

Recommendation 10. At all levels of administration potential conflict-of-interest problems should be headed off by preventive action, such as, for example, orientation programs for all new employees to acquaint them with the applicable conflict-of-interest rules, and periodic reminders as to such rules.

Recommendation 11. There should be more effective prohibitions and penalties applicable to persons outside Government who induce or participate in conduct by Government employees in violation of the conflict-of-interest laws.

Recommendation 12. Each committee of the Senate considering a Presidential nominee for confirmation should be given the benefit of a full analysis, prepared by the Administrator in consultation with the Department of Justice, of any conflict-of-interest problems the nominee's particular situation may present. The confirming committee should give due consideration to this analysis and to the protections afforded by a modern and effectively administered overall scheme of conflict-of-interest restraints, if one is put into effect.

Recommendation 13. The Congress should initiate a thorough study of the conflict-of-interest problems of members of Congress and employees of the legislative branch of the Federal Government.

Let me now focus on three of the foregoing recommendations which would help to facilitate recruitment.

Recommendation 5 calls for clarification of present laws to permit the retention by Government employees of certain security-oriented economic interests, such as continued participation in private pension plans.

Hallmarks of modern American society are the pension plan, the group insurance plan, and other kinds of security-oriented arrangements. They are the basis of long-range economic planning by millions of individuals and families. Under present conflict-of-interest laws -- passed when few,

if any, of such plans existed -- there is some doubt whether an employee of the government may legally continue as a member of some plans maintained by his former employer, at least if contributions to the plan by the employer are regularly made which benefit the Government employee. This overhanging doubt presents a great deterrent or creates a severe hardship to the non-career employee.

Our proposed Act permits Government employees to continue their participation in certain private plans under some circumstances and with adequate safeguards. For example, it would permit a Government employee to remain a member of a pension, group insurance or other welfare plan maintained by his former private employer so long as the employer makes no contribution to the plan on behalf of the former employee who is in Government service. Similarly, a Government employee could continue to belong to certain of these plans even if the former employer does make contributions on his behalf, so long as the plans are qualified under the Internal Revenue Code and so long as the payments by the former employer continue for no longer than five years of Government service.

We think our Recommendation 5 is extremely important. It is simple in concept, and, I am confident, acceptable even to the most ardent advocates of more stringent conflict-of-interest laws.

Our Recommendation 6 calls for some differentiation in treatment between regular employees and citizens who serve the Government only intermittently, for short periods, as advisers and consultants.

To an ever increasing extent the Government is dependent for information and advice -- for learning not only how to do it, but what to do -- upon part-time, temporary, and intermittent personnel. These serve individually, or as members of committees, but that service is in addition to their regular private work as scientists, technicians, scholars, lawyers, businessmen and so on. Technically, they are, however brief their service, "employees" of the Government, and at present, all of the conflict-of-interest statutes apply to them. This fact has brought about both refusals to serve and conscious or unconscious ignoring of the statutes by those who do serve. It has also resulted in a welter of special statutory exemptions.

Our proposed Act distinguishes, in a few key places where it is safe and proper, between rules for regular full-time Government employees and rules for what are defined as "intermittent employees." Under the proposed Act, an "intermittent employee" is anyone who, as of any particular date, has not performed services for the Government on more than 52 out of the immediately preceding 365 days. The 52-day limit could be increased to 130 days by Presidential order in a narrow class of cases.

For these intermittent employees, we suggest certain special rules under the proposed Act. For example, regular full-time employees would be forbidden to assist private parties for pay in transactions involving the Government; intermittent employees, who have to earn a living in addition to their occasional Government work, would be allowed to assist others for pay in such transactions, except in cases where the particular transaction is, or within two years has been, under the intermittent employee's official

responsibility or where he participated in the transaction personally and substantially on behalf of the Government.

Similarly, since intermittent employees, by definition, are employed by organizations in addition to the Government, they would not, under our proposed bill, be subject to the rule forbidding their Government pay to be supplemented from private sources in return for personal services. Finally, the rules we propose as to receipt of gifts are somewhat different for the two classes of employees.

Our Recommendation 13 deals with the problem of Senate confirmation. There is substantial evidence that the Government's efforts to recruit top-level executives have been impeded by the requirements of stock divestment imposed by the Armed Services Committee of the Senate.

This problem cannot be dealt with by statute. The confirmation power is a constitutional prerogative. However, this problem should be a subject of joint concern and increased cooperation between the Executive Branch and the Senate. There is some evidence that recently the Executive Departments have taken more pains to prepare their nominees for confirmation. Legal opinions have on occasion been furnished by the Justice Department; plans have been worked out in advance of hearing as to what need be sold and what could be kept, and representatives of the appointing department or agency confer in advance of hearing with appropriate authorities of the Committee.

If the proposed Act were passed, the "Administrator" would become the central repository for all information concerning conflict-of-interest,

and he would be expected to assist the Executive Branch in working out regular procedures for preparing nominees for confirmation. He could, in cooperation with the Department of Justice and general counsel to the agency in question, prepare a full analysis of the conflict-of-interest problems of the particular nominee. Over a period of time, these analyses might be given substantial weight by the confirming committees.

Furthermore, if a modern and effective system of statutory restraints is adopted by Congress and implemented by active Executive Branch administration, the confirming committees might be willing to place greater reliance on the statutory rules and procedures. One clear example is the procedure for disqualification recognized by the proposed Act where a Government official holds a particular economic interest in a private entity.

For example, take the case of Robert Sprague, who came before you early in your deliberations. Mr. Sprague was nominated as Assistant Secretary of the Air Force in January, 1953. The Senate Armed Services Committee opposed his confirmation because he refused to sell his shares in his family firm, the Sprague Electric Company. His nomination was thereupon withdrawn on February 11, 1953.

I feel confident that if there had been on the books a strengthened version of the present 18 U.S.C. Section 434, which is aimed at self-dealing, and if there were presently in operation a well-established and effective system for self-disqualification of officials from any matters in which they might conceivably have a personal economic interest, the

Sprague appointment could have been saved. In other words, the confirming committees will relax their efforts to impose a broad wall of disqualification prior to assumption of office only if they can be assured that a strong and workable program exists for disqualification after assumption of office in specific situations. In brief, the confirming committees can be greatly aided in performing their function realistically, in the light of recruitment needs, only if Congress as a whole lends support by modernizing the entire structure of conflict-of-interest restraints.